MONTANA LEGISLATIVE HISTORY

Chapter 76 1989

Bill H 168 S _____ Original bill & history ✓ C

H. Committee on	Judiciary		S. Committee on	Judiciary	
Hearing Date(s)	1/31	✓ C	Hearing Date(s)	2/28	✓ C
		C			C
		C			C
		C			C
Date Out	1/31	✓ C		3/1	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/21 SIGNED BY GOVERNOR
CHAPTER NUMBER 197 EFFECTIVE DATE: 3/21/89

HB 168 INTRODUCED BY LEE, ET AL.
CERTAIN SENTENCES TO BE SERVED CONSECUTIVELY

1/13	INTRODUCED		
1/14	REFERRED TO JUDICIARY		
1/16	FISCAL NOTE REQUESTED		
1/23	FISCAL NOTE RECEIVED		
1/23	FISCAL NOTE PRINTED		
1/31	HEARING		
1/31	COMMITTEE REPORT--BILL PASSED		
2/02	2ND READING PASSED	72	23
2/04	3RD READING PASSED	74	21
	TRANSMITTED TO SENATE		
2/06	REFERRED TO JUDICIARY		
2/28	HEARING		
3/02	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	24	22
3/06	3RD READING CONCURRED	28	22
	RETURNED TO HOUSE		
3/09	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 76 EFFECTIVE DATE: 10/01/89		

HB 169 INTRODUCED BY LEE, ET AL.
PROVIDE NO EXPUNGEMENT OF RECORD WHEN SENTENCE IMPOSITION IS DEFERRED

1/13	INTRODUCED		
1/14	REFERRED TO JUDICIARY		
1/31	HEARING		
1/31	TABLED IN COMMITTEE		
2/18	TAKEN FROM THE TABLE BY COMMITTEE		
2/18	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	75	22
2/21	3RD READING PASSED	83	14
	TRANSMITTED TO SENATE		
2/28	REFERRED TO JUDICIARY		
3/13	HEARING		
3/14	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	47	0
3/17	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/30	2ND READING AMENDMENTS CONCURRED	95	2
3/31	3RD READING AMENDMENTS CONCURRED	94	1
4/04	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/05	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 463 EFFECTIVE DATE: 4/06/89		

HOUSE BILL NO. 168

INTRODUCED BY Lee Bridges Connelly

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF A PERSON SERVING A SENTENCE IS AGAIN CONVICTED, THE TWO SENTENCES ARE SERVED CONSECUTIVELY UNLESS THE COURT ORDERS OTHERWISE; AND AMENDING SECTION 46-18-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-401, MCA, is amended to read:

"**46-18-401. Merger---of** Consecutive **sentences.** (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term ~~shall~~ may not be merged in the other term ~~except as provided in subsection (5)~~; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation ~~shall~~ may not be merged in any new sentence of commitment or probation.

(2) The court ~~merging~~, whether or not it merges the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite ~~the sentences being~~ any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses ~~shall~~ must run ~~concurrently~~ consecutively unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

-End-

LC 0847/01

INTRODUCED BILL
HB168

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB168 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing that if a person serving a sentence is again convicted, the two sentences are served consecutively unless the court orders otherwise; and amending Section 46-18-401, MCA.

ASSUMPTIONS:

1. 51.5 percent of male population were repeat offenders in 1988.
2. Average net sentence length of the 1988 male population was 23.1 years.
3. Average net sentence length of all 1988 male offenders with all sentences computed as consecutive was 32.4 years, a 40.25 percent increase. To be conservative, assume that only one-half that increase should be considered since repeat offenders comprise just over one-half the population. A 20.125 percent increase would result.
4. The average length of stay in 1988 was 30.5 months for all incarcerated males. A 20.125 percent increase would result in an average LOS of 36.64 months.
5. Assume that all, one-half and one-quarter of repeat offenders receive increased (consecutive) sentences as a result of HB168. Future length of stay would be affected as follows:

   A) All repeat offenders receive increased sentences...
      50% of population LOS unchanged
      50% of population LOS increases 20.125%
      Average increase in LOS - 10%
   B) One-half of repeat offenders receive increased sentences...
      75% of population LOS unchanged
      25% of population LOS increases 20.125%
      Average increase in LOS is 5.1%
   C) One-quarter of repeat offenders receive increased sentences...
      87.5% of population LOS unchanged
      12.5% of population LOS increases 20.128%
      Average increase in LOS is 2.6%

   Future lengths of stay for the HB168 option were calculated by multiplying anticipated lengths of stay by the increases derived above.

Ray Shackleford 1/21/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Thomas N. Lee 1/23/89
THOMAS N. LEE, PRIMARY SPONSOR DATE

Fiscal Note for HB168 , as introduced

HB 168

Form CS-32
Rev. 1985

STATUS SHEET

51 LEGISLATIVE SESSION

JUDICIARY COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB168	1-14	1-31	1-31	1-31							
HB169	1-14	1-31	2-18			2-18					
HB172	1-14	1-24	1-24			1-24					
HB177	1-14	1-20	2-3			2-3					
HB178	1-14	1-20	1-25	1-25							
HB179	1-16	1-31	1-31	1-31							
HB185	1-16	1-27	2-6			2-6					
HB189	1-16	1-24	1-24	1-24							
HB194	1-16	1-24	(TABLED	ON 1-24)							
HB197	1-17	1-27	2-3			2-3					
HB204	1-17	1-30	1-31			1-31					
HB206	1-17	2-1	2-1			2-1					
HB231	1-17	1-26	2-1			2-1					
HB232	1-17	1-27	2-9			2-9					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Brown, on January 31, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None.

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON HOUSE BILL 168

Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that this bill will reverse the current statute that, unless so ordered, if there are two or more sentences, they will be automatically merged and served concurrently. Unless the judge took specific action the sentences would be served consecutively. It principally addresses justice both for the offender and the victim and also for society. There is no rationale in most instances for an individual to be allowed to have two or more crimes for the price of one sentence and this bill addresses it.

Testifying Proponents and Who They Represent:

Michael Keedy, Kalispell District Judge

Proponent Testimony:

Mr. Keedy stated that the Legislature's statement of policy found in Sec. 46-18-401 says that the correctional policy is to protect society by preventing crime through punishment and rehabilitation of the convicted. The Legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and

that punishment of the convicted is certain, timely and consistent. By law in Montana today any time an offender is convicted of and sentenced for multiple offenses even if they occur involving completely unrelated victims in different parts of the state and different times his sentences for those offenses will be merged by statute. The net effect is that the sentences for these various crimes will be served by him concurrently or simultaneously rather than consecutively. The people of the state are concerned first and foremost with accountability, retribution and public safety rather than pure economics and too often the Legislature has been beset by considerations of cost effectiveness and economics rather than prevention and public safety. Rep. Lee's bill is an attempt to change the law in this area to make it consistent with what the people want and expect and what the Legislature has already said about its corrections policy.

Testifying Opponents and Who They Represent: None.

Opponent Testimony: None.

Nick Rotering, Department of Institutions, testified as a neutral party.

Mr. Rotering stated that his department did a fairly detailed study of this bill and that study is contained in the fiscal note. With a lot of assumptions based upon the types of individuals that they have been receiving over the last several years, if this bill passes they assume a 20% increase in population by 1995 at the state prison. With no new construction this would put them at 156% of capacity. Again, that is the fiscal impact on the bill.

Questions From Committee Members: Rep. Addy told Mr. Keedy that he assumed that judges knew the net effect of their sentencing. Mr. Keedy stated that in most cases judges that are sentencing an offender for multiple offenses committed within their jurisdiction, otherwise, they probably don't know the net effect. If someone in his court is convicted of forgery and robbery and comes to him for sentencing for two offenses on the same date he will be aware of the full picture and make a conscious choice whether the sentences imposes against him should be served concurrently or consecutively. He thought it was fair to say that virtually every judge in the state could say the same. The trouble comes with the other sections of existing law, sub-paragraph a and b, in which one judge sitting in one part of the state has no particular reason to be aware of offenses that may have been committed by the defendant who is appearing before him for sentencing or the disposition of those cases and doesn't take them into account. Most particularly in his jurisdiction, when Judge Erickson sentenced Danny Arledge in 1986 for attempted deliberate homicide, robbery and aggravated burglary, all offenses which were committed on a

crime spree in Flathead County and then one of the judges in the Fourth district in Missoula County in 1987 sentenced Mr. Arledge for arson and forgery and didn't take into account the sentences which Mr. Arledge had received from Judge Erickson. On appeal the Supreme Court, in light of section 46-18-401 was obliged to merge the sentences which meant in practical terms that Mr. Arledge was able to commit the offenses of arson and forgery without consequence.

Rep. Gould asked Mr. Keedy, in light of his experience as a legislator and a judge, if the increase is due to the length of stay, was not due so much to the harshness of sentencing as the sentences befitting the crime. Mr. Keedy responded that at any sentencing hearing the judge looks for ways to justify enabling an offender to avoid incarceration, at least at Montana State Prison. He goes out of his way whenever it's reasonably consistent with the demands of public safety to place an offender on probation under deferred or suspended sentence and to give him an opportunity to prove that faith in him is not misplaced. So it is fair to say, that for the most part, the men at Deer Lodge and the women at the Correctional Center have earned have earned their way there. They have committed serious crimes, probably repeated these crimes over a long period of years and in one sense, the sentencing practices of judges are partly responsible for the inmate population problem at the prison. He couldn't think of anyone at Deer Lodge that doesn't deserve to be and the principle behind Rep. Lee's bill is to assure that when someone has committed a serious crime involving the threat or use of physical violence that he receives his just deserve for that rather than having the crime automatically melted into a sentence imposed for a completely separate offense.

Rep. Eudaily asked Mr. Keedy if he thought the end result of this bill was truly reflected in the fiscal note. Mr. Keedy did not know but he thinks it is fairly drawn and didn't think it was alarmist, reasonably conservative and an attempt to be as accurate as possible in projecting the economic impact of this bill. No one can really say because it depends entirely on sentencing practices of judges throughout the state. He thought the time had come and gone for the Legislature to address the questions of crime, justice and public safety not in economic terms but in terms of what is called for under the circumstances and that is consecutive sentencing for separate crimes unless the judge thinks otherwise. Rep. Eudaily asked if the pattern of sentencing by judges will change a great deal because of this bill. Mr Keedy thought it probably will since by force of law, sentences are consecutive instead of concurrent unless the judge orders otherwise. Defense counsel will bring to the judge's attention the question of merger or non-merger out of concern for the length of total sentences which their clients are going to be faced with. Too often today in his experience, judges are unmindful of sentences that other

judges have imposed or which may be pending for disposition in other jurisdictions in the case of an offender who has moved around the state committing one crime here and another crime there. This will have a tendency to make judges more alert to all of the circumstances involved with a particular offender when they make a decision with respect to concurrent or consecutive.

Rep. Boharski asked Mr. Keedy if the reason for bringing this bill had anything to do with the fact that judges aren't doing an adequate job of sentencing. Judges have always had the discretion to require those sentences to be served consecutively. Mr. Keedy responded that was true and that in a number of cases judges just simply are ignorant of all of the circumstances involved. The fact the other charges may be pending in another jurisdiction and then later when those charges are disposed of in that jurisdiction the follow-up judge is not attentive to what happened in the case before him. Judges are like every other human being and sometimes gloss over the practical effect of what they do.

Closing by Sponsor: Rep. Lee closed.

DISPOSITION OF HOUSE BILL 168

Motion: Rep. Gould moved HB 168 DO PASS. Rep. Brooke seconded.

Discussion: Rep. Addy spoke in favor of the motion because it provides for the true impact of the judge's determination. Rep. Brown stated that this bill deals with policy matter and not fiscal impact.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: The motion that HB 168 DO PASS CARRIED unanimously.

HEARING ON HOUSE BILL 169

Presentation and Opening Statement by Sponsor:

Rep. Thomas Lee, District 49, stated that HB 169 is an act providing when an imposition of a sentence is deferred the deferral period has passed and the charges are dismissed the defendant's record may not be expunged. This bill reverses the current situation regarding the expungement upon successful completion of deferred sentences. After a person has successfully completed serving a deferred sentence his record concerning that crime is expunged. The Department of Justice has an amendment to offer to this bill to which he does not object. From prior experience in law enforcement as a federal narcotics agent in Chicago, it is clear how valuable access to criminal records are in the course of

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 31, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 168 DATE JAN. 31

SPONSOR REP. LEE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MICHAEL KEEDY	KALISPELL	X	
Thomas M. Lee	Bigfork	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

STANDING COMMITTEE REPORT

January 31, 1989

Mr. Speaker: We, the committee on Judiciary report that House Bill 168 (first reading copy -- white) do pass .

Signed: _____
Dave Brown, Chairman

CHAIRMAN--BRUCE CRIPPEN
SECRETARY-ROSEMARY JACOBY | COMMITTEE--(S) JUDICIARY | OFFICE--ROOM 412
NORMAL SCHEDULE==> SITE: ROOM 325 | DAYS: M,T,W,T,F TIME: 10:00 A.M.

NOTE: BILL WILL BE LISTED TWICE IF REREFERRED BACK TO THE SAME COMMITTEE

BILL	REFER DATE	LATEST DATE/ACTION ON BILL	
HB 135	01/26	04/24--TABLED IN COMMITTEE SPONSOR: MERCER, JOHN	TITLE-REVISE WRONGFUL DEATH AND SURVIVORSHIP DAMAGES
HB 146	01/26	02/24--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 07/01/89 TITLE-ALLOW TRAINING AT THE MT. LAW ENFORCEMENT ACADEMY FOR NONSERVICE STUDENTS
HB 147	02/02	03/22--(H) CHAPTER NUMBER SPONSOR: WHALEN, TIM	EFFECTIVE DATE: 10/01/89 TITLE-CUSTODIAL PARENT AS PERSONAL REPRESENTATIVE
HB 152	02/02	03/21--(H) CHAPTER NUMBER SPONSOR: ADDY, KELLY	EFFECTIVE DATE: 07/01/89 TITLE-REVISE YOUTH COURT MENTAL COMMITMENT
HB 168	02/06	03/15--(H) CHAPTER NUMBER SPONSOR: LEE, THOMAS	EFFECTIVE DATE: 10/01/89 TITLE-CERTAIN SENTENCES TO BE SERVED CONSECUTIVELY
HB 169	02/28	04/06--(H) CHAPTER NUMBER SPONSOR: LEE, THOMAS	EFFECTIVE DATE: 04/06/89 TITLE-NO EXPUNGMENT OF RECORD WHEN SENTENCE IMPOSITION IS DEFERRED
HB 177 A	02/11	03/23--(H) CHAPTER NUMBER SPONSOR: BROWN, JAN	EFFECTIVE DATE: 01/01/90 TITLE-CREATE ADMINISTRATIVE REVIEW PANEL FOR CHIROPRACTIC MALPRACTICE CLAIMS
HB 178	02/02	03/13--(H) CHAPTER NUMBER SPONSOR: CODY, DOROTHY	EFFECTIVE DATE: 10/01/89 TITLE-TO CLARIFY LAW MANDATING REPORTS OF SUSPECTED CHILD ABUSE AND NEGLECT
HB 179	02/06	03/03--(S) ADVERSE COM RPT ADOPTED (S) JUDICIARY SPONSOR: LEE, THOMAS	TITLE-REMOVE TWO-YEAR LIMIT ON MODIFICATION OF DISSOLUTION, SEPARATION DECREE
HB 185	02/11	03/29--(H) CHAPTER NUMBER SPONSOR: WHALEN, TIM	EFFECTIVE DATE: 10/01/89 TITLE-PROHIBITING DETENTION IN JAIL PENDING MENTAL HEALTH COMMITMENT HEARING
HB 189	01/30	03/20--(H) CHAPTER NUMBER SPONSOR: RICE, JIM	EFFECTIVE DATE: 10/01/89 TITLE-INCREASE SENTENCE FOR CERTAIN INCEST OFFENDERS
HB 204	02/11	04/10--(H) CHAPTER NUMBER SPONSOR: COBB, JOHN	EFFECTIVE DATE: 04/10/89 TITLE-SRS LIEN ON, RATHER THAN SUBROGATION FOR, MEDICAL ASSISTANCE PAID
HB 206	02/08	03/23--(H) CHAPTER NUMBER SPONSOR: GOULD, BUDD	EFFECTIVE DATE: 10/01/89 TITLE-SUSPEND DRIVER'S LICENSE FOR FAILURE TO APPEAR/PAY FOR NO PROOF OF INSURANCE
HB 232	02/17	03/22--(H) CHAPTER NUMBER SPONSOR: BROWN, DAVE	EFFECTIVE DATE: 07/01/89 TITLE-REVISE FEES OF CLERK OF DISTRICT COURT; IMPOSE FEE FOR CONCEALED WEAPON
HB 248	02/08	03/24--(H) CHAPTER NUMBER SPONSOR: MCDONOUGH, MARY	EFFECTIVE DATE: 03/24/89 TITLE-CLARIFY EXEMPTION LAWS RELATING TO WAGES, RETIREMENT BENEFITS
HB 260	01/31	02/23--(H) CHAPTER NUMBER SPONSOR: CLARK, ROBERT	EFFECTIVE DATE: 10/01/89 TITLE-MISDEMEANOR FOR DRIVING WHILE LICENSE IS SUSPENDED/REVOKED IN ANY STATE
HB 265	02/06	03/20--(H) CHAPTER NUMBER SPONSOR: STRIZICH, BILL	EFFECTIVE DATE: 03/20/89 TITLE-REVISE AND REORGANIZE OPTIONS FOR DISPOSITION OF TROUBLED YOUTHS
HB 286	02/06	03/06--(S) 3RD READING FAILED SPONSOR: LEE, THOMAS	TITLE-LOWER COURT MAY PROHIBIT SENTENCED PERSON'S OWNING OR CARRYING WEAPON
HB 295	02/15	04/11--(H) CHAPTER NUMBER	EFFECTIVE DATE: 10/01/89

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on February 28, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON HOUSE BILL 5

Presentation and Opening Statement by Sponsor:
Representative Eudaily was unable to be present for the hearing. William Mutch, legislative intern for Senator Crippen, opened the hearing reading a prepared statement to the committee (Exhibit 1).

List of Testifying Proponents and What Group they Represent:

Greg Petesch, Legislative Council

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Greg Petesch explained the reason for Section 83. In preparing the bill for this session as code commissioner, he said, he ran across Section I, 11-101-2 (g) ii which said: "Given specific instructions by another bill, the code commissioner may correct

Closing by Sponsor: Representative Quilici said he would have no objections to any amendment that would make the program more workable.

DISPOSITION OF HOUSE BILL 13

Discussion: Senator Beck wondered if there shouldn't be a cap on the funds that accrued. Senator Crippen commented that the House appropriation process would have to have studied the bill. But, since no cap was placed on it, he felt there was little concern. Senator Pinsoneault added that it was a pro bono bill. The monies received are small, he said.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Harp MOVED that House Bill 13 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 168

Presentation and Opening Statement by Sponsor:
Representative Tom Lee of Bigfork, District 49, opened the hearing, saying the bill was at the request of District Judge Michael Keating of Kalispell. Current law says, that unless a judge specifically requires consecutive serving of sentences, two or more sentences are to be automatically merged, so they are served at the same time. This bill reverses that procedure so that sentences will be served concurrently only by specific order of the judge. This change makes automatic the concurrent serving of two or more sentences. If there are reasons for merged sentences, the option is provided for on page 2, line 7, he said. He told an example of a man who received a long string of sentences for several convictions. Prior to that, the man had received 20 years each for arson and forgery in Missoula. But, because the judge did nothing, those sentences were merged with the sentences received in Kalispell.

List of Testifying Proponents and What Group they Represent:

John Connor, Department of Justice, appearing for the Montana County Attorneys' Association
Dan Russell, Department of Institutions

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor said the bill makes a lot of good, practical sense from the point of justice and from the prosecuting attorneys view. He said that if a person continues to be picked up and sentenced, that he is simply not getting the message. He noted that there was a complicated fiscal note, but called attention to the fact that crime has a significant effect on the state. So, even if we have to pay now, we will have to pay more in the future if we don't get the message across. The court still has discretion, he said, and could still give concurrent sentences, if it chooses to do so.

Dan Russell said the bill would have an impact on the prison population. He said that over 50% of the inmates are repeat offenders with an average length of stay of 30.5 months. This bill will increase the stay from 1 to 6 months, with 24 to 88 additional inmates by 1995. The prison is currently overcrowded, operating at 140% capacity, with 1060 inmates in 754 cells. The women's correctional facility is operating at 156%. Both are forecast to increase radically in the next few years, he said, without any legislation affecting the populations.

Questions From Committee Members: Senator Pinsoneault asked how long Mr. Russell had been in prison work. Mr. Russell said 20 years and had been the administrator in corrections for 10 of those years.

Senator Pinsoneault asked if there ever had been a time when the prison was not overcrowded. Mr. Russell said not that he knew.

Senator Brown asked for a comment on the fiscal note and Mr. Russell said he felt it might be a little low.

Senator Brown asked if a new building would have to be built. Mr. Russell said the impact of the bill would require a new building.

Senator Brown said that it had been mentioned that there would be an increase in the prison population without the bill. Mr. Russell said there is presently a proposal for a new 96-bed security unit. There is also a proposal for a

50-bed intensive supervision program, he said, both of which are currently needed. That proposal doesn't take any bills into consideration that would increase prison population, he added. When the prison was built, it was built for 744 inmates and it was assumed that the capacity could increase to 1250 beds. That can be done by adding housing units one, at a time. The problem is now that the inmates are double bunking, he told the committee. He said they were presently out of beds and were going to have to open a dormitory in the basement of Rothe Hall within the month.

Senator Crippen asked if the district judge didn't already have the authority to do what the bill provided. Mr. Connor said yes, but that it changed the thrust of sentencing.

Senator Pinsoneault asked what might be an alternative to the bill. Mr. Connor said there might be a change in our approach to crime. Many times persons convicted of 4 or 5 crimes walk out of court without serving any sentences on probation.

Senator Crippen said that, in previous sessions, mandatory sentences and length of time were increased. Is that working, he wondered. Mr. Connor said there was a mandatory minimum for drug offenses. But, he knew of a person who received 2 years on probation even in a drug case. Prosecutors have no right to appeal sentencing, he said.

Senator Mazurek asked if the fiscal note was discussed on the floor of the House. Rep. Lee answered yes.

Closing by Sponsor: Rep. Lee said the bill addressed justice, rather than judges mistakes or money per se. Fiscal concerns should be considered separately concerning justice and punishment, otherwise the people in the state are not being properly served, he said. He closed the hearing.

DISPOSITION OF HOUSE BILL 168

Discussion: Senator Crippen asked that action on the bill be postponed.

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 168 DO PASS. After some discussion, he WITHDREW his motion.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-28-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. HB168 DATE 2-28-89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dan Russell	Dept. of Inst	Info.	Only
Ted Clack	" "	"	"
John Connor	Dept of Justice Mt. County Atty Assn		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce D. Crippen, on March 1, 1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, Mike Halligan, Bob Brown, Joe Mazurek, Loren Jenkins, R. J. Pinsoneault, John Harp and Bill Yellowtail.

Members Excused: None

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary

Announcements/Discussion: None

HEARING ON HOUSE BILL 409

Presentation and Opening Statement by Sponsor:

Representative Susan Good of Great Falls, District 36, opened the hearing saying the bill clarified attorney privileges pertaining to clients. She said the privilege goes both ways.

List of Testifying Proponents and What Group they Represent:

William Conklin, Great Falls attorney, himself
C. W. Leapart, Helena attorney, himself
Sue Weingartner, Montana Defense Trial Lawyers

List of Testifying Opponents and What Group They Represent:

Michael Sherwood, Montana Trial Lawyers Association

EXECUTIVE SESSION ON BILLS PREVIOUSLY HEARD

DISPOSITION OF HOUSE BILL 168

Discussion: Senator Crippen commented that the legislature had made serious studies of concurrent versus consecutive sentencing for offenses committed during parole. Senator Pinsoneault said that judges already have the authority to do consecutive sentencing. Senator Halligan said the sentencing is used as a negotiating tool and that it was difficult to get a judge to give consecutive sentencing. He thought it ought to be negotiated "out" rather than forcing the legislature to get it "in". Senator Bishop said it seems logical to do it this way, that the judge would still have discretion. Senator Pinsoneault said he thought it was a good bill. Senator Beck had reservations about the bill.

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 168 BE CONCURRED IN. The MOTION CARRIED by a vote of 6 to 4 with Senators Beck, Mazurek, Yellowtail and Crippen voting NO.

DISPOSITION OF SENATE BILL 431

Discussion: There was extensive study and discussion of the amendments proposed for the bill. The "VanValkenburg Amendments were distributed. Senator Van Valkenburg said he was on the Board of Directors of the Big Brothers and Sisters who operate a bingo operation 7 days a week to raise money for their projects. He hoped this type of organization would be taken into consideration in the study the bill. He said he had an alternative to amendment #9 with which the Department had problems. Jim Smith of the Department of Commerce thought the department of Justice would not have any problem with them. He said there might be concern with the language on the third line of the amendment "other than the operation of the game". He said it might be language that undesirable operators could use to cover other types of operations. Senator VanValkenburg said he attempted to deal with concerns of the committee in the previous executive session. He thought, however, that the bill should be enacted and the state should live with it for two years to see where it could be further improved.

Senator Mazurek said he was surprised about the size of

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-1-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 3-1-89 House Bill No. 168 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK		✓
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL		✓
SEN. CRIPPEN		✓

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Sen. Pinsoneault - Be Concurred On

SF-3 (Rev. 1987)

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 168 (third reading copy -- blue), respectfully report that HB 168 be concurred in.

Sponsor: Lee (Jenkins)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

scrbb168 301

HB 0168/02

HOUSE BILL NO. 168

INTRODUCED BY LEE, BISHOP, CONNELLY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IF A PERSON SERVING A SENTENCE IS AGAIN CONVICTED, THE TWO SENTENCES ARE SERVED CONSECUTIVELY UNLESS THE COURT ORDERS OTHERWISE; AND AMENDING SECTION 46-18-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-401, MCA, is amended to read:

"**46-18-401. Merger---of** Consecutive **sentences.** (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term ~~shall~~ may not be merged in the other term ~~except as provided in subsection (5)~~; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation ~~shall~~ may not be merged in any new sentence of commitment or probation.

(2) The court ~~merging~~, whether or not it merges the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite ~~the sentences being~~ any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses ~~shall~~ must run ~~concurrently~~ consecutively unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

-End-

REFERENCE BILL